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**IN THE
COURT OF APPEALS OF INDIANA**

MACARTHUR DRAKE & ASSOCIATES,)

Appellant-Defendant,)

vs.)

No. 45A04-0509-CV-543

TOWER CROSSING ASSOCIATES,)

as assignee of the EDWARD F. NAPLETON)

REVOCABLE TRUST, as assignee of NBD Bank,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE COUNTY SUPERIOR COURT
The Honorable Sheila Moss, Judge
Cause No. 45D08-0301-PL-692

November 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Macarthur Drake & Associates (Macarthur) appeals from the trial court's default judgment in favor of appellee-plaintiff Tower Crossing Associates (Tower) in Tower's eviction action against Macarthur. Because Macarthur did not file its motion to correct error or notice of appeal in a timely manner, we must dismiss this appeal.

FACTS

Tower filed a complaint for eviction against Macarthur on January 24, 2003. The parties entered into an agreed order of possession on June 10, 2004, and a hearing on the amount of damages was set for October 28, 2004. After Macarthur failed to appear at the hearing, the trial court entered a default judgment and awarded Tower damages in the amount of \$8,253.92.

On December 22, 2004, Macarthur filed a motion to set aside the default judgment, which the trial court denied on February 18, 2005. On March 24, 2005, Macarthur filed a motion to correct error, which the trial court denied on April 28, 2005. Macarthur filed a notice of appeal on May 31, 2005, and an alias notice of appeal on August 15, 2005. On August 25, 2005, the trial court filed an affidavit attesting that there are no transcripts for any of the above proceedings. Macarthur now appeals.

DISCUSSION AND DECISION

Tower argues that Macarthur has forfeited this appeal because Macarthur did not file a notice of appeal within thirty days of the trial court's default judgment on October 28, 2004. While Tower correctly argues that Macarthur has forfeited its right to appeal, Tower's reasoning is erroneous and we dismiss the appeal for the reasons discussed below.

After the trial court entered the default judgment order on October 28, 2004, Macarthur filed a Trial Rule 60(B) motion on December 22, 2004. The trial court denied Macarthur's motion on February 18, 2005. Pursuant to the Indiana Rules of Trial and Appellate Procedure, Macarthur had thirty days from that date to file either a motion to correct error or a notice of appeal. Ind. Trial Rule 59; Ind. Appellate Rule 9. Macarthur filed an untimely motion to correct error on March 24, 2005—three days after the thirty-day time period had expired on March 21, 2005. As we have previously held, timely action after a trial court's final judgment is a "jurisdictional prerequisite, and failure to conform with the applicable time limits results in forfeiture of the appeal." Hatfield v. Edward J. DeBartolo Corp., 676 N.E.2d 395, 398 (Ind. Ct. App. 2002). Macarthur's failure to file a motion to correct error or a notice of appeal by March 21, 2005, divests this court of jurisdiction and; therefore, we must dismiss this appeal.

Appeal dismissed.

VAIDIK, J., and CRONE, J., concur.